

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE: § § CASE NO 21-30071
THE GATEWAY VENTURES, LLC, § §
Debtor. § §

**MOTION OF DEBTOR (I) TO EXTEND TIME FOR REMOVAL OF
CIVIL ACTIONS UNDER RULE 9027 AND (II) FOR RELATED RELIEF**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR
INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY ONE (21) DAYS FROM THE
DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED
WITHOUT A HEARING BEING HELD.**

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE H. CHRISTOPHER MOTT, U.S. BANKRUPTCY JUDGE:

The Gateway Ventures, LLC debtor in possession (“TGV” or “Debtor”) file this *Motion of Debtor (I) to Extend Time for Removal of Civil Actions under Rule 9027 and (II) for Related Relief* (the “Motion”), and in support thereof would show the Court the following.

INTRODUCTION

1. By this Motion, TGV requests entry of an order extending the periods of time under Fed. R. Bankr. P. 9027 for the removal of claims and causes of action through August 1, 2021.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Motion pursuant to Sections 105, 363, and 1101 et seq. of the United States Bankruptcy Code, Title 11 of the U.S. Code, 11 U.S.C. §101 et

seq. (the “Code” or “Bankruptcy Code”), and Rule 9027 of the Federal Rules of Bankruptcy Procedure (the “Rules” or the “Bankruptcy Rules” or individually a “Rule” or a “Bankruptcy Rule”), and 28 U.S.C. §§157 and 1334.

3. This matter constitutes a core proceeding under 28 U.S.C. §157(b).
4. Venue is proper under 28 U.S.C. §§1408 and 1409.
5. The Court has constitutional authority to decide this Motion under *Stern v. Marshall*, 564 U.S. 462 (2011) and its progeny.

FACTUAL BACKGROUND

The identify and background of the Debtor and Debtor in Possession.

6. TGV owns and is the developer of a tract of real property of approximately 19 acres in El Paso, El Paso County, Texas commonly referred to as 6767 W. Gateway Blvd. El Paso, TX 79925 and 1122 Airway Blvd (the “Development”).

The Commencement of the Bankruptcy Cases.

7. On February 5, 2021 (the “Petition Date”), TGV commenced the above-caption case by filing a voluntary petition under Chapter 11 of the Code.

8. TGV is in possession of its assets and is proceeding in this case as a debtor-in-possession.

9. No trustee or committee is appointed.

Debtor’s Pre-Petition Litigation.

10. On or about March 10, 2020, Westar Investors Group, LLC (“Westar”) commenced an action against TGV and other parties which is styled and captioned as Case No. 2020DCV0914; *Westar Investors Group, LLC, et al vs. The Gateway Ventures, LLC, et al.*, pending in the County Court at Law No. 6 of El Paso County, Texas (the “Westar Litigation”).

11. The Westar Litigation remained pending as of the Petition Date.

12. On or about September 16, 2020, in connection with the Westar Litigation, Westar recorded a lis pendens against the Development.

13. The Weststar Litigation if not otherwise resolved likely would be removed to this bankruptcy case as part of a Chapter 11 plan and would be decided after confirmation in order to determine the ultimate waterfall under such plan.

14. TGV does not believe that any other litigation was pending against TGV as of the Petition Date, but in an abundance of caution relief is sought herein as to any prepetition litigation.

RELIEF REQUESTED

15. TGV respectfully requests entry of an order extending for ninety (90) days the deadline to remove the Westar Litigation and any other litigation that applies under Fed. R. Bankr. P. 9027(a).

BASIS OF RELIEF

16. Bankruptcy Rule 9027 and 28 U.S.C. § 1452 govern the removal of pending civil actions. Specifically, § 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

17. Bankruptcy Rule 9027(a)(2) further provides, in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

18. Bankruptcy Rule 9006(b) provides that the Court may extend the period within which the Debtors may remove actions provided by Bankruptcy Rule 9027, without notice, upon a showing for cause:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order . . .

Fed. R. Bankr. P. 9006(b)(1).

19. It is well settled that the Court is authorized to extend, for cause, the removal period provided under 28 U.S.C. § 1452 and Bankruptcy Rule 9027. *See In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (providing that the United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a) pursuant to Bankruptcy Rule 9006(b)).

20. Cause exists to extend the Removal Deadline in this Chapter 11 case from the current deadline of May 3, 2021, to and including August 1, 2021.

21. An extension of the Removal Deadline will afford the Debtors an opportunity to make more fully informed decisions concerning the removal of any Civil Action, and will assure that the Debtor and the estate of the Debtor do not forfeit the valuable rights afforded to the Debtor under 28 U.S.C. § 1452. Therefore, it is the belief of the Debtor that it is prudent to seek an extension of the time prescribed under Bankruptcy Rule 9027(a) for filing notices of removal from the current deadline of May 3, 2021, to and including August 1, 2021. Furthermore, an extension would not prejudice the rights of the adversaries of the Debtors in the Civil Actions because any party to an action that is removed may seek to have the action remanded to state court pursuant to 28 U.S.C. § 1452(b).

22. Retaining the ability to remove litigation also shall preserve the ability to determine the waterfall under a confirmed Chapter 11 plan.

23. The Debtors further request that the order approving this Motion be without prejudice to (i) any position the Debtor may take regarding whether Code § 362 applies to stay any given Civil Action pending against the Debtor and (ii) the right of the Debtor to seek further extensions of the Removal Deadline.

RESERVATION OF RIGHTS

24. Debtor reserve the right to amend, supplement, and/or withdraw this Motion prior any interim hearing or final hearing.

CONCLUSION AND PRAYER

WHEREFORE, The Gateway Ventures, LLC, debtor and debtor-in-possession respectfully requests entry of an order extending the deadlines to remove Westar Litigation and any other pending prepetition litigation for ninety (90) additional days through and including August 1, 2021. Movant respectfully requests such other and further relief to movant is entitled at law or in equity.

{continued on following sheet}

Dated: May 3, 2021

Respectfully submitted:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Jeff Carruth

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ATTORNEYS FOR
THE GATEWAY VENTURES, LLC,
DEBTOR AND DEBTOR IN POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on May 3, 2021 (1) by electronic notice to all ECF users who have appeared in this case to date, and/or as set forth below and (2) by regular mail to all parties appearing in the attached address list (i.e. mailing matrix) obtained from the Court's PACER facility. *A copy of the service lists was not served with the regular mail service set but is available by contacting the undersigned.*

ANY PARTY REQUESTING A FULL SIZED COPY OF THIS PLEADING OR COPIES OF ANY EXHIBITS SHOULD CONTACT THE UNDERSIGNED.

/s/ Jeff Carruth
JEFF CARRUTH

21-30071-hcm Notice will be electronically mailed to:

Jeff Carruth on behalf of Debtor The Gateway Ventures, LLC
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Label Matrix for local noticing 0542-3 Case 21-30071-hcm Western District of Texas El Paso Thu Mar 18 08:48:44 CDT 2021	The Gateway Ventures, LLC c/o PDG Prestige, Inc. 780 N Resler Drive, Suite B El Paso, TX 79912-7196	U.S. BANKRUPTCY COURT 511 E. San Antonio Ave., Rm. 444 EL PASO, TX 79901-2417
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Deepesh Shrestha c/o James M. Feuille ScottHulse PC P.O. Box 99123 El Paso, TX 79999-9123	Deepesh Shrestha 3708 N. White Chapel Blvd. Southlake, TX 76092-2042	El Paso County Tax AC 301 Manny Martinez Dr., 1st Floor El Paso, TX 79905-5503
HD Lending LLC 6080 Surety Dr. Ste 101 El Paso, TX 79905-2066	HD Lending LLC c/o Stephen H. Nickey PC 1201 North Mesa Ste. B El Paso, TX 79902-4000	HD Lending, LLC c/o Clyde A. Pine, Jr. Mounce Green Myers P.O. Box 1977 El Paso, Texas 79999-1977
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Union Gateway, LLC c/o Ryan Little P. O. Drawer 1977 El Paso, Texas 79999-1977	United States Trustee - EP12 U.S. Trustee's Office 615 E. Houston, Suite 533 P.O. Box 1539 San Antonio, TX 78295-1539	Westar Investor Group LLC c/o Eric Wood (Brown Fox) 8111 Preston Rd. Ste 300 Dallas, TX 75225-6329

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IN RE: § § CASE NO 21-30071
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**ORDER GRANTING MOTION OF DEBTOR (I) TO EXTEND TIME FOR
REMOVAL OF CIVIL ACTIONS UNDER RULE 9027 AND (II) FOR
RELATED RELIEF (RE: DOCKET NO. 45)**

On this day, came on for consideration the *Motion of Debtor (I) To Extend Time for Removal of Civil Actions Under Rule 9027 and (II) For Related Relief* (Docket No. 45) (the "Motion") filed herein on May 3, 2021 by The Gateway Ventures, LLC, debtor and debtor-in-possession ("TGV" or the "Debtor").

IT IS THEREFORE ORDERED THAT: the deadline under Bankruptcy Rule 9027 for TGV to remove to this Court and this case the Westar Litigation and any other pre-petition litigation is hereby extended through and until August 1, 2021.

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